

Mohan Kumar and Others Vs. The State of Tamil Nadu, Rep. By the Inspector of Police, Erode District

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Court : Chennai

Decided On : Aug-08-2016

Judge : S. Nagamuthu & V. Bharathidasan

Appeal No. : Criminal Appeal Nos. 802 of 2015, 6 & 233 of 2016

Appellant : Mohan Kumar and Others

Respondent : The State of Tamil Nadu, Rep. By the Inspector of Police, Erode District

Judgement :

(Common Prayer in all the Criminal Appeals:- These Criminal Appeals have been filed under Section 372 (2) Cr.P.C., against the judgment passed by the learned III Additional District and Sessions Judge, Gobichettipalayam in S.C.No.70 of 2013 dated 09.12.2015.)

Common Judgment

S. Nagamuthu, J.

1. The appellant in Crl.A.No.802 of 2015 is A.2; the appellant in Crl.A.No.6 of 2016 is A.3 and the appellant in Crl.A.No.233 of 2016 is A.1 in S.C.No.70/2013, on the

file of the learned III Additional District and Sessions Judge, Erode, Gobichettipalayam. A.1 stood charged for offences under Sections, 302 r/w 120(B) and 302 I.P.C; A.2 stood charged for offence under Section 302 I.P.C and A.3 stood charged for offence under Section, 302 r/w 120(B) I.P.C. By judgment dated 09.12.2015, the trial Court convicted, A.1 for offences under Sections 302 r/w 120(B) and 302 I.P.C; A.2 for offence under Section 302 I.P.C., and A.3 for offence under Section 302 r/w 120(B) I.P.C. The trial Court sentenced A.1 to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for six months, for offence under Section 302 r/w 120(B) I.P.C and to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for six months, for offence under Section 302 I.P.C; sentenced A.2 to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for six months for offence under Section 302 I.P.C., and sentenced A.3 to undergo imprisonment for life and to pay a fine of Rs.5,000/- (no default sentence was imposed by the trial Court), for offence under Section 302 r/w 120(B) I.P.C. The trial Court ordered to run the above sentences concurrently in respect of A.1. Challenging the above said conviction and sentence, the appellants/A.1 to A.3 are before this Court with these Criminal Appeals.

2. The case of the prosecution, in brief, is as follows:-

The deceased in this case was one Mr.Karthikeyan. A.3 Mrs.Yamuna is his wife. A.1 is the cousin of Mr.Karthikeyan. A.2 is a friend and associate of A.1. The deceased was working in a private establishment known as M/s.Shakthi Sugars at Appakoodal in Erode District. He was residing with A.3 at Nachimuthupuram Colony. Out of the said wedlock, the deceased and A.3 had a male child. A.1 being the cousin of the deceased, used to visit the house of the deceased. In due course of time, A.1 developed illicit relationship with A.3. This came to the knowledge of the deceased. He questioned the same. A.1 and A.3 got wild over the same. They believed that the deceased was a hindrance for them, to continue their illicit relationship. Therefore, according to the case of the prosecution, on 11.02.2013, at the house of the deceased, A.1 and A.3 conspired to kill the deceased. It is alleged that after killing the deceased, they decided to marry. A.1

assured that he would do away with the deceased by engaging A.2 who is his associate.

3. It is further alleged that on the same day, around 7.45 pm, A.1 spoke to the deceased over cell phone and informed him that there was a birthday party of one of his friends. He invited the deceased to participate in the same. The deceased believed the words of A.1. He went in his motorcycle to the TASMACH shop at Appakoodal as requested by A.1. A.1 had come in a motorcycle bearing registration No.TN 34 6305 to the said TASMACH shop. The deceased purchased brandy bottles from the said TASMACH shop. From there, the deceased left in his motorcycle bearing registration No.TN 36 M 0493 and A.1 and A.2 left in the motorcycle belonging to A.1 bearing registration No.TN 34 6305 towards Perundalaiyur Village. This happened around 9.00 pm.

4. It is the further case of the prosecution that A.1 and A.2 took the deceased to a nearby village known as Perunthalaiyur where, A.1 attacked the deceased with an iron rod and A.2 attacked the deceased with a beer bottle. Then they strangled him by means of a kerchief, using the same as a ligature, around the neck of the deceased. The deceased died on the spot. Abandoning the dead body there itself, A.1 and A.2 fled away from the scene of occurrence. The occurrence was not witnessed by anyone.

5. P.W.1 is the then Village Administrative Officer of Perunthalaiyur Village. On 12.02.2013, while he was at his office around 6.30 am, some of the villagers informed him that a dead body of a male was found lying in the Bhavani river at Serayampalayam Village. Immediately, he went to the said place and found the dead body. The hero honda motorcycle belonging to the deceased was found parked near the said place. Then P.W.1 went to Kavandapadi Police Station and made a complaint at 7.30 am on 12.02.2013. Ex.P.1 is the complaint and Ex.P.27 is the F.I.R. The then head Constable attached to the Kavundampadi Police Station, on receipt of the said complaint, registered a case in Crime No.65/2013 for offence under Section 302 I.P.C. He forwarded both the complaint (Ex.P.1) and the F.I.R., (Ex.P.27) to Court, which were received by the learned Judicial Magistrate at 10.00 am on 12.02.2013.

6. P.W.21, the then Inspector of Police, took up the case for investigation. He went to the place of occurrence at 8.30 am. He prepared an observation mahazar and a rough sketch, in the presence of P.W.14 and another witness. He recovered the motorcycle belonging to A.1 (M.O.6) from the place of occurrence under a mahazar. He also recovered the blood stained earth; sample earth and a broken beer bottle, from the place of occurrence. He arranged for a Photographer to take photograph of the dead body, surrounding place and the place of occurrence. Then he conducted inquest on the dead body of the deceased and forwarded the same for post mortem.

7. P.W.16 Dr.Jaisingh, conducted autopsy on the body of the deceased at 5.00 pm on 13.02.2013 and he found the following injuries:-

1. Reddish pressure abrasion 7 x 1cm noted over right side neck. The medial end is 4 cm below the angle of mandible and the lateral end is 10 cm below to the right mastoid.
2. Reddish pressure abrasions 4 x 1 cm noted over right side neck, 1 cm below to the above ligature.
3. Stab with lacerated margin 3x2cm x muscle deep noted over left side neck in its middle, the medial end is 3 cm left to midline. On dissection the wound passed inwards, upwards cutting the underlying muscle, nerves, and vessels including external carotid artery up to 4 cm along the muscle plane. Multiple tiny glass pieces noted on the edges of the wound.
4. Laceration 4 x 1cmxmuscle deep noted over right side chin, on dissection the underlying mandible found fractured with surrounding tissue contusion 9reddish in colour).
5. Laceration 4x1cmxmuscle deep noted ever lower border of right side chin.
6. Laceration 2x1cm x entire thickness noted over right side middle of lower lip.
7. Laceration 2x1cm x entire thickness noted over upper part of right ear lobe.
8. Incised like laceration 3x1cmxbone deep noted over left forehead

9. Laceration 3x1cm x muscle deep noted over right forehead with surrounding area reddish contusion over an area of 3x2cm.
10. Punctured laceration 4 in number in varying sizes noted over left forehead over the area 6x3cm just above to the left eyebrow.
11. Multiple reddish scratch abrasions over an area of 8x4 cm noted over right side face.
12. Punctured laceration 2 in number noted over left side upper chest each measuring 4 cm.
13. Oval shaped lacerations three in numbers noted over left side upper chest each measuring 4 cm.
14. Reddish scratch abrasion 4 in number noted over right side upper chest just below clavicle.
15. Reddish multiple scratch abrasions four in number noted over back of chest and abdomen.
16. Punctured laceration 0.5cm diameter noted over left side chin. On dissection the underlying left side mandible found fractured in its angle with surrounding tissue contusion (reddish in colour)
17. Upper lateral incisor and canine found fractured with surrounding tissue contusion (reddish in colour).

Ex.P.18 is the post mortem certificate and Ex.P.19 is his final opinion regarding the cause of death. He has opined that the death was due to shock and haemorrhage due to the injuries found on the body of the deceased. P.W.21 during the course of investigation, recovered the blood stained clothes from the body of the deceased and forwarded the same to Court.

8. On 13.02.2013, near mini auto stand at Asokapuram Village. He found A.1 and A.2 moving in the motorcycle bearing registration No.TN 34 6305. He arrested both the accused and recovered the motorcycle in the presence of P.W.7 and

another witness. On such arrest, A.1 gave a voluntary confession in which, he disclosed the place where he had hidden a gold ring. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the ring (M.O.7). A.2 also gave a voluntary confession, in which, he disclosed the place where he had hidden a gold necklace. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the necklace (M.O.11); blood stained shirt (M.O.10) and blood stained pant (M.O.9); kerchief (M.O.17) and iron rod (M.O.16). P.W.21 recovered the above material objects under a mahazar. On returning to the Police Station, he forwarded A.1 and A.2 to Court for judicial remand and also forwarded the material objects to Court.

9. P.W.21 arrested A.3 on 14.02.2013 at 8.30 am. Then he forwarded A.3 also to Court for judicial remand. At his request, the material objects were sent for chemical examination. On completing investigation, he laid charge sheet against all the three accused.

10. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 21 witnesses were examined and 32 documents were exhibited and 22 Material Objects were marked.

11. Out of the said witnesses, P.W.1, the then Village Administrative Officer has stated that he found the dead body of the deceased on 12.02.2013 at 6.30 am and then, he made a complaint to the Police. P.W.2 is the mother of the deceased. She has stated that on 12.02.2013, in the morning, A.3 informed her that the deceased had not returned home. She went in search of him. But later, she came to know that the deceased was found lying dead at the place of occurrence. P.W.3 is a neighbour of the deceased. He has also stated that he found the dead body at the place of occurrence along with P.W.2. P.W.4 is a resident of Irayamangalam Village. During the relevant time, he was working as a Painter. He has stated that on 11.02.2013, around 12.00 in the mid night, A.3 spoke to him over phone and informed that the deceased who had gone for work in the spinning mill and had not returned home. On the next day morning by 7 'O' clock, he came to know about

the fact that the deceased was lying dead, at the place of occurrence. He has spoken about the preparation of observation mahazar and rough sketch also. P.W.5 is an important witness for the prosecution. According to him, on 11.02.2013, at 8.00 pm, at Appakoodal four road junction, in the TASMACH shop, A.1 and yet another person not known to him previously, purchased beer bottles and went away in the motorcycle. P.W.6, is a neighbour of Appakoodal village. He has stated that on 11.02.2013, at 8.30 pm, he was on the Bhavani river bank at Appakoodal and at that time, he heard the noise raised by a motorcycle where two persons travelled and he also heard the noise raised by another motorcycle where the deceased went. He stayed at the same place till 10.30 pm. At that time, one motorcycle alone returned. During the test identification parade, he has identified A.1 and A.2 as a persons who went in the motorcycle.

12. P.W.7, has stated about the arrest of A.1 and A.2 and the consequential recoveries made on the disclosure statements. P.W.8 is the brother of the deceased. He has stated that on one day, he found A.1 and A.3 in a compromising position at the house of the deceased and A.3. He informed the same to his brother namely, the deceased. He has further stated that on the day of occurrence, he returned from the school and at that time, he heard A.1 and A.3 talking among themselves thereby conspiring to kill the deceased. But, he has not disclosed about the same to anybody.

13. P.W.9 has stated that on 11.02.2013, around 7.00 pm, two people came in the motorcycle and wanted an iron rod for some purpose. He gave the same. P.W.10 has spoken about the arrest of A.3. P.W.11 was a co-worker of the deceased. According to him, on 11.02.2013, around 7.45 pm, the deceased received a phone call. He told him that he was going to a party and left the premises. Thereafter, on the next day, he came to know that the deceased was dead. P.W.12 has stated that A.1 purchased the motorcycle in question. P.W.13 has stated that he took the dead body and handed over the same to the Doctor for post mortem. P.W.14 has spoken about the photographs taken at the place of occurrence. P.W.15 is a Nodal Officer in the Aircel service provider. He has stated that as requested by the Police, he gave the call details for the cell phone No.98650 13165, for the period between 10.02.2013 and 12.02.2013. P.W.16 has spoken about the post mortem

conducted and his final opinion regarding the cause of death. P.W.17 has stated about the test identification parade conducted by him on 06.03.2013. During test identification parade, P.W.9 identified both the accused correctly. P.W.6 did not identify any accused. The other witnesses also did not identify the accused. P.W.18, the then Head Clerk of the jurisdictional Magistrate has stated that on the orders of the Court, as requested by the Investigating Officer, he forwarded the Material Objects for chemical examination. P.W.19 has spoken about the chemical analysis conducted on the material objects and his opinion. P.W.20 has spoken about the registration of the case on the complaint of P.W.1. P.W.21 has spoken about the entire case of the prosecution.

14. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. One Mr.Mohankumar was examined as D.W.1 and as many as six documents were exhibited as Exs.D.1 to D.6. D.W.1 has stated that he was a co-worker of the deceased in the company and he was maintaining the muster roll of the workers in the said company. According to the muster roll, on 11.02.2013 at 7.53 am, the deceased had come to the company and around 12.03 pm, he went out for lunch. At 12.59 pm, he had again came into the company at 5.05 pm he left the company. Exs.D.1 to D.3 are the news published in various news papers and Ex.D.4 is the arrest memo pertaining to A.2. Ex.D.5 is a photograph of the house of A.2. Ex.D.6 is the attendance register of the deceased.

15. Having considered all the above materials, the trial Court convicted the appellants/A.1 to A.3, as stated in the first paragraph of this judgment. Challenging the same, the appellants/A.1 to A.3 are before this Court with these Criminal Appeals.

16. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

17. As per the evidence of D.W.1, the co-worker of the deceased, it is crystal clear that the deceased left the company, where he was working at 5.05 pm on 11.02.2013. Thereafter, the dead body of the deceased was found on the next

day, that was, on 12.02.2013 at 6.30 am. The evidence of the Doctor who conducted autopsy would go to prove that the death of the deceased was a homicide. Thus, the prosecution has succeeded in establishing that the deceased had died some time between 5.05 pm on 11.02.2013 and 6.30 am on 12.02.2013.

18. Now, the question is Who is the perpetrator of the crime ? . P.W.5 has stated that on 11.02.2013, at 8.00 pm, in the TASMAC shop at Appakoodal four road junction, A.1 along with another person, purchased liquor and went away in the motorcycle. The deceased also came and he went in another motorcycle. He has identified A.2 during test identification parade also. But, in our considered view, the evidence of P.W.5 can only go to show that around 8.00 pm on 11.02.2013, A.1 and A.2 went in a motorcycle and thereafter, the deceased went in a different motorcycle and there was no link between the departure of the accused and the deceased. P.W.6 has stated that near the river bank at Appakoodal, he found two people going in one motorcycle and one person going in another motorcycle. He has not even identified these accused in Court, as the persons who went in the motorcycle. Thus, the evidence of P.W.6 also would not have any help to the prosecution. P.W.7 has spoken about the arrest of A.1 and A.2 and on such arrest, the recoveries of M.O.7, gold ring and other blood stained earth were allegedly made. But, there is no evidence to connect these material objects either with the crime or with the deceased. P.W.8 has spoken about the conspiracy. It is difficult to believe the said witness because, had it been true that he found A.1 and A.3 conspired to kill the deceased, he would not have kept silent without informing the same either to the deceased or to the others in the family. Thus, the conduct of the said witness makes his evidence unbelievable. There is no other evidence to connect the accused with the crime.

19. In view of the foregoing discussions, we hold that the prosecution has failed to prove the case beyond reasonable doubts. As it has been guaranteed under Article 21 of the Constitution of India, life and liberty of an individual cannot be deprived of without following the procedure established by law. The Court's of law, cannot convict an accused on mere surmises and conjectures. Suspicion, however strong it may be, cannot take the place of proof. In this case, the prosecution has not even been able to succeed in creating a very strong suspicion against these

accused. For these reasons, we hold that the conviction and sentence imposed on the appellants/A.1 to A.3 are not sustainable and hence, the same are liable to be set aside.

20. In the result, the Criminal Appeals are allowed and the conviction and sentence imposed on the appellants/A.1 to A.3 by the learned III Additional District and Sessions Judge, Gopichettipalayam in S.C.No.70 of 2013, dated 09.12.2015, are set aside and the appellants/A.1 to A.3 are acquitted. The fine amount, if any paid, shall be refunded to them. The bail bond, if any, executed by the appellants/A.1 to A.3, shall stand discharged.

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